

REMARKS

On August 2, 2005, the Examiner issued a Restriction Requirement between Invention I (Claims 1-26), Invention II (Claims 27-29); Invention III (Claims 30-41) ; and Invention IV (Claims 42 and 45. On August 16, 2005, Applicants elected Invention I without traverse. On October 18, 2005 the Examiner issued a further Office Action in which he correctly pointed out that Applicants had overlooked the Species Election Requirement in Paragraph 7 of the earlier Office Action. Applicants then responded on November 3, 2005 electing the species for categories (a), (b), and (c) to be those shown in claims 17, 6, and 19, respectively. It should be noted that Claim 17 is an embodiment of the film of claim 1 where the film 1 is disposed on a transparent polymeric support.

The key issue now arises as Applicants point out that Claims 1, 2, 5-12, and 15-23 read on the elected embodiment. Next, the Examiner issued a further Office Acton of November 28, 2005 stating that claim 1 is “structurally distinct and independent” from claim 17, and therefore all but claims 17-19 were withdrawn from consideration.

Applicants traversed this holding on the claims. The Examiner never made a determination that claims 1 and 17 were different inventions. He only required that a species be elected as between films with and without a transparent polymeric support. Applicants then elected the embodiment with a transparent polymeric support. The only remaining issue should have been which claims read on that elected embodiment. Applicants continue to believe that Claims 1, 2, 5-12, and 15-23 read on the elected embodiment.

In the most recent Office action dated May 22, 2006, the Examiner observes:

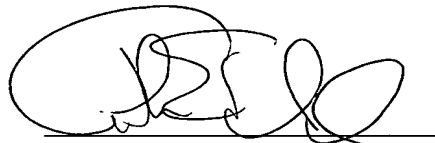
Applicant's traversal in the reply filed on 3/31/2006 is acknowledged. The traversal is on the ground(s) that “... It is not seen how the film of claim 1 and of claim 17 are independent and distinct... since claim 1 is clearly generic to claim 17... Claim 1 does not exclude a transparent polymeric support... since it is a comprising claim...”. This is not found persuasive, while claim 1 is a comprising claim, the Examiner repeats that since claim 1 does not require a transparent polymeric support, as set forth in claim 17, claim 1 and its dependent claims are structurally distinct and independent from the film species of claim 17. In particular, Applicants are reminded that the specification clearly discloses that the optical film of claim 1 can be a free-standing film (see

specification, page 12, line 22), which does not require a support film. As such the Examiner asserts that claims 1 and 17 are directed to structurally independent and distinct inventions, and if the support is an essential element of elected species, the absence of such limitation in claim 1 and its dependent claims renders them either as non-elected species, or not enabling under USC 112, first paragraph, because it lacks a critical or essential element to the practice of the invention.

The requirement is still deemed proper and is therefore made FINAL.

This petition is being filed within two months of the Examiner's refusal upon reconsideration. Applicants hereby petition the Commissioner for Patents to overrule the Examiner and to instruct the Examiner to Examine Claims 1, 2, 5-12, and 15-23 as being within the Species election made by Applicants and to issue a new non-Final Office Action on all of Claims 1, 2, 5-12, and 15-23 since Claims 1, 2, 5-12, 15, 16, and 20-23 have as of yet received not even a first Office Action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. Kluegel', is written over a horizontal line.

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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.